

REMARKS

Reconsideration and withdrawal of the restriction requirement and species election is respectfully requested in view of the remarks herein.

The April 2, 2007 Office Action required restriction from among the following Groups of claims:

- I. Claims 1-13, 38-41, 43-45 and 47-50, drawn to a method of manufacturing a composition, classified in class 514, subclass 178;
- II. Claims 14-26 and 32, drawn to a method for reducing cardiovascular disease risk, classified in class 424, subclass 569; and,
- III. Claims 27-31, 33-37, 42, 46 and 51, drawn to a pharmaceutical composition comprising an agent, classified in class 514, subclass 178.

Applicants hereby elect, with traverse, the claims of Group II.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “ [i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Thus, for a restriction requirement to be proper, it must satisfy both of the above elements.

The Office Action indicated that Groups III and II are related as product and process of use. It is therefore inherent that while searching for references that describe the use of the product, the search will necessarily also include available documents that relate to the product itself. Indeed, as Groups II and III include a small number of claims each, the rejoinder of Groups II and III would result in a small number claims to be searched, such that it should not be an undue burden on the examiner. The Office Action indicates that such a search would be unduly burdensome as the claims of Groups II and III have been classified separately. Applicants respectfully submit that a separate classification is not enough, in and of itself, to indicate an undue burden. Indeed, it is often the practice of the Office to classify a single Group of claims in more than one class or subclass. Thus, without further elaboration, the separate classifications of the groups of claims is not sufficient for an undue burden to be found.

Consequently, reconsideration and withdrawal of the restriction requirement, and rejoinder of the claims of Groups II and III are respectfully requested.

In summary, enforcing the present restriction requirements would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, whereby a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made. Indeed, the search and examination of each Group would be likely to be co-extensive and, in any event, would involve such interrelated art that the search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigate against restriction.

CONCLUSION

Reconsideration and withdrawal of the restriction requirement and election of species and an early and favorable examination on the merits is respectfully requested in view of the remarks herein.

Respectfully submitted,

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